

January 9, 1995

The Honorable Wendell Kimura
Acting Director
Office of the Legislative Reference Bureau
The Capitol Center
1177 Alakea Street, 6th Floor
Honolulu, Hawaii 96813

Dear Mr. Kimura:

Re: Commission on Sexual Orientation and the Law

This is in response to a letter to the Office of Information Practices ("OIP") from the former Director of the Office of the Legislative Reference Bureau ("LRB"), Samuel B.K. Chang, dated December 20, 1994, requesting an advisory opinion concerning the records of the Commission on Sexual Orientation and the Law ("Commission").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the Commission is an "agency" which must file a public records report with the OIP in accordance with sections 92F-18(b) and (c), Hawaii Revised Statutes.

FACTS

The Commission was established by section 6 of Act 217, Session Laws of Hawaii 1994 ("Act 217"). The purposes of the Commission as set forth by Act 217 are to:

- (1) Examine the precise legal and economic benefits extended to opposite-sex couples, but not to same-sex couples;

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- (2) Examine whether substantial public policy reasons exist to extend such benefits to same-sex couples and the reasons therefor; and
- (3) Recommend appropriate action which may be taken by the legislature to extend such benefits to same-sex couples.

Act 217, 1994 Session Laws of Hawaii 532.

In November 1994, the Commission was activated upon the appointment of the ten members and the one chairperson.¹ The Commission, which was placed within the Legislative Reference Bureau ("LRB") for administrative purposes, is required by Act 217 to report to the Legislature by December 29, 1994. According to Mr. Chang's letter to the OIP dated December 20, 1994, the Commission intends to ask the Legislature for an extension to the life of the Commission until July 1, 1996 in order to accomplish the purposes set forth in Act 217.

Section 92F-18(b), Hawaii Revised Statutes, requires each agency to "compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices on or before December 31, 1994." The UIPA also requires each agency to "supplement or amend its public report, or file a new report, on or before July 1 of each subsequent year, to ensure that the information remains accurate and complete." Haw. Rev. Stat. § 92F-18(c) (Supp. 1992). Mr. Chang requested an advisory opinion concerning whether the Commission is required to report its records under the UIPA.

DISCUSSION

¹In accordance with Act 217, ten of the eleven Commission members were appointed by the governor of the State of Hawaii, of which two members were appointed from each of the following entities: the Hawaii Civil Rights Commission, the American Friends Service Committee, the Catholic Church diocese, the Church of Latter-Day Saints, and the Hawaii Equal Rights Marriage Project. The eleventh member, the chairperson of the Commission, was appointed by the President of the Senate and the Speaker of the House of Representatives. See Act 217, 1994 Session Laws of Hawaii 532.

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The provisions of the UIPA apply only to records maintained by an "agency." The term "agency" is defined in section 92F-3, Hawaii Revised Statutes, as:

[A]ny unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.

Haw. Rev. Stat. § 92F-3 (Supp. 1992) (emphasis added).

In OIP Opinion Letter No. 94-2 (March 21, 1994), we addressed the issue of whether the Review Commission on the State Water Code ("Water Code Commission") is an "agency" under the UIPA required to report its records in accordance with section 92F-18, Hawaii Revised Statutes. Like the Commission in the present situation, the Water Code Commission was created by the Legislature and placed within the Legislative Reference Bureau for administrative purposes. The Water Code Commission also has a limited existence and will cease to exist after December 1995.

An earlier advisory opinion, OIP Opinion Letter No. 93-17 (Oct. 8, 1993), found that the term "agency" under the UIPA includes the subunits of the Legislature, which would encompass the Legislature's research offices such as the LRB. Consequently, in OIP Opinion Letter No. 94-2, we concluded that the placement of the Water Code Commission within the LRB indicates that the Legislature intended the Commission to function as a government entity. See OIP Op. Ltr. No. 94-2 at 4.

Moreover, after examining the purposes and the duties of the Water Code Commission set forth in Act 57, Session Laws of Hawaii 1993, we concluded that the Water Code Commission is performing a government function, a crucial factor in determining whether an entity is an "agency" under the UIPA. Based upon all of the above factors, as well as the express definition of "agency" set forth in section 92F-3, Hawaii Revised Statutes, we opined that the Water Code Commission is an "agency" for purposes of the UIPA.

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Although the Water Code Commission has a limited existence, we noted in OIP Opinion Letter No. 94-2, that "the limited duration of an entity created to perform a government function is not relevant when determining whether the entity constitutes an 'agency' under the UIPA." OIP Op. Ltr. No. 94-2 at 4. Further, "[e]ven if an agency no longer exists, so long as any records of the agency exist, the disclosure of those records will be governed by the UIPA, and therefore, the records must be included within the public records report in accordance with sections 92F-18(b) and (c), Hawaii Revised Statutes." OIP Op. Ltr. No. 94-2 at 4, n.2.

We believe that the same factors which resulted in our finding that the Water Code Commission is an "agency" subject to the UIPA are present here. Like the Water Code Commission, the Commission in the present situation is of limited duration, was placed administratively within the LRB, and is performing a government function in accordance with Act 217. Moreover, the definition of "agency" under the UIPA expressly includes "commission[s]." Accordingly, in our opinion, the Commission is an "agency" within the definition provided in section 92F-3, Hawaii Revised Statutes, and as such, the Commission must report its records in accordance with sections 92F-18(b) and (c), Hawaii Revised Statutes.

Very truly yours,

Stella M. Lee
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

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